

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Eddie L. Hall,)
)
Petitioner,)
) C/A No.: 2:13-cv-02526-TLW
vs.)
)
The State of South Carolina and Warden)
Kershaw Correctional Institution,)
)
Respondents.)
)

ORDER

Petitioner Jermaine Demetrius Miles (“Petitioner”), proceeding *pro se* and *in forma pauperis*, filed this habeas petition pursuant to 28 U.S.C. § 2254. (Doc. #1). The matter now comes before this Court for review of the Report and Recommendation (“the Report”) filed on September 20, 2013, by Magistrate Judge Bruce Howe Hendricks, (Doc. #9), to whom this case was previously assigned. In the Report, the Magistrate Judge recommends dismissing the case without prejudice and without requiring Respondent to file an Answer or return. (Doc. #9). The Magistrate Judge also recommends denying a Certificate of Appealability. (Id.). Plaintiff filed objections to the Report on October 7, 2013. (Doc. #11). In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections.... The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed,

in either case the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of the standard set forth in Wallace, the Court has reviewed, de novo, the Report and the objections. After careful review of the Report and objections thereto, the Court hereby **ACCEPTS** the Report. (Doc. #9). The Plaintiff's objections are **OVERRULED**. (Doc. #11). The Plaintiff's case is **DISMISSED** without prejudice and without requiring Respondent to file an Answer or return. The Plaintiff's Motion captioned "Objection To Late Conditional Order of Dismissal and Return And Motion To Restrict Future Filings," (Doc. #14), is deemed **MOOT** in light of this order.

Additionally, the Court has reviewed this petition in accordance with Rule 11 of the Rules Governing Section 2254 Proceedings. The Court concludes that it is not appropriate to issue a Certificate of Appealability. Petitioner is advised that he may seek a certificate from the Fourth Circuit Court of Appeals under Rule 22 of the Federal Rules of Appellate Procedure.

IT IS SO ORDERED.

s/Terry L. Wooten
Chief United States District Judge

January 14, 2014
Columbia, South Carolina